

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

JULES MARCUS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2365

Decision No. CU 6091

Counsel for claimant:

Harold Westmore, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JULES MARCUS for \$168,485.54 based upon the asserted ownership and loss of certain personal property and a stock interest in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

Claimant described his loss as follows:

1. 2,685 shares of General Distributors, Incorporated, a Cuban corporation		\$137,588.00
2. Bank account	\$ 2,497.54	
3. Money left with Cuban attorney	3,000.00	
4. Rent deposit	2,400.00	
5. Cash	8,000.00	
6. Clothing and furnishings	<u>15,000.00</u>	<u>30,897.54</u>
		\$168,485.54

The record discloses that claimant owned certain personalty and stock interests in Cuba, which were taken by the Government of Cuba, all as further discussed below.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

STOCK INTEREST

General Distributors, Incorporated was nationalized by the Government of Cuba by Resolution 3 published on October 24, 1960, pursuant to Law 851. Subsequently the National Institute of Agrarian Reform appointed an administrator therefor,

The record contains copies of stock certificates issued to claimant in 1958 establishing that he owned 2,408 shares of Series A stock of General Distributors, since prior to October 24, 1960. Claimant also asserts title to 277 shares of Series B stock of the corporation which he states have been lost or stolen. He states in his affidavit of October 11, 1967 that he paid \$240,800.00 for the Series A stock and \$27,700.00 for the Series B stock. The record also includes the affidavit of the former President and Treasurer of the corporation who states that the Series A stock had a par value of \$100.00 and that the Series B stock had a par value of \$10.00; that claimant paid \$240,800.00 for 2,408 shares of Series A stock at \$100.00 par; and \$27,700.00 for 277 shares of Series B stock, having a par value of ten dollars a share. He further states that in his opinion the stock owned by claimant (about 51.06 per cent of the outstanding stock) had a value of \$500,000.00 at the time of loss. He has not submitted evidence in support of this assertion, however.

The corporation was engaged in distributing such products as chewing gum, candies, cigarettes and other tobacco products, certain food products, and batteries.

The record shows that General Distributors had outstanding 4,721 shares of Series A stock and 478 shares of Series B stock, a total of 5,199 shares. There is nothing of record to show that either carried any preferences. The Commission finds that claimant owned 2,408 shares of Series A stock and 277 shares of Series B stock, a total of 2,685 shares.

Claimant submitted evidence that he asserted a tax loss in the amount of \$137,588.00 on his stock interest, and states that it was allowed.

Claimant has submitted a balance sheet for General Distributors as of June 30, 1960, which was prepared by a firm of Chartered Accountants in Havana. This balance sheet reflects the following:

ASSETS

Current

Cash in hand and in Bank	\$ 13,078.88	
Deposits (not explained)	47,886.27	
Accounts Receivable-Regular	310,195.29	
Accounts Receivable-Judicial Action	3,450.53	
Cash Value-Life Insurance Policy	2,602.32	
Other Accounts Receivable	4,448.87	
Industrial Commissions Receivable	2,641.87	
Merchandise Inventory	303,499.62	
Merchandise in Transit	40,563.14	
Unexpired Insurance Premiums	3,276.67	
Postage Inventory	66.20	
Tax on the 35 million (unexplained)	2,490.00	
Deposits on expenses	<u>330.16</u>	\$734,529.82

Investments

Stock-Ferrocarriles Occidentales	3,900.00	
Bonds-Cia. Cubana de Electricidad	1,000.00	
Proveedores Aliados, S.A.	<u>4,700.00</u>	9,600.00

Fixed Assets

Machinery and equipment (depreciated)	25,522.71	
Furniture & Fixtures	<u>19,101.70</u>	44,624.41

Intangible Assets

Trademarks and Patents	1,683.84	
Goodwill	<u>20,000.00</u>	21,683.84

Deferred Charges

Improvement on rented property	12,224.64	
Prepaid Expenses	<u>1,947.78</u>	<u>14,172.42</u>

Total Assets

\$824,610.49

LIABILITIES

Current

Drafts Payable	\$147,061.64	
Loans Payable	2,610.00	
Suppliers	31,714.57	
Taxes and miscellaneous expenses	19,076.25	
Provision for commission on collections	13,624.53	
Advertising reserve payable	<u>18,283.18</u>	\$232,370.17

Bank Loan payable 6%

225,000.00
\$457,370.17

CAPITAL

4,721 Series A shares	\$472,100.00	
478 Series B shares	<u>4,780.00</u>	
	476,880.00	
Net Deficit	<u>109,639.68</u>	<u>367,240.32</u>

Total Liabilities & Capital

\$824,610.49

The Commission has examined this balance sheet in light of the record and has concluded that the claimant has not established that the items of

Cash and Deposits existed as assets of the corporation on October 24, 1960. Similarly, claimant has not established that the asserted cash value of a life insurance policy, nor the "Tax on the 35 million" are properly assets. Further, there is no evidence to establish that the bonds of the Cia. Cubana de Electricidad were secured by property in Cuba which was nationalized or otherwise taken by the Government of Cuba when the properties of the Cuban Electric Company in Cuba were taken by the Government of Cuba (see Claim No. CU-2578). Pursuant to Section 505(a) of the Act, debts due from American concerns may not be allowed unless they constituted charges on property which was nationalized or otherwise taken by the Government of Cuba. (See Claim of Anaconda American Brass Company, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.) Accordingly, the Commission finds that these items, totalling \$67,057.47 must be deducted. The assets thus total \$757,553.02. After deduction of the liabilities the net worth of the company is seen as \$300,182.85 or \$57.7386 per each of the 5,199 shares.

Accordingly, the Commission finds that claimant's 2,685 shares of General Distributors had a value of \$155,028.14 on the date of loss.

PERSONALTY

Bank Account:

Claimant has submitted a bank statement showing that as of September 30, 1960, he had a balance of \$2,497.54 (the peso and the dollar being on a par) in the former First National City Bank of New York (Nationalized).

On December 6, 1961, the Cuban Government published its Law 989 which effected confiscation of all assets, personal property, real estate, rights, shares, stocks, bonds and securities of those persons who left the country.

In the absence of evidence to the contrary, the Commission finds that claimant's above-described bank account, totalling \$2,497.54 was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Money with attorney; Rental deposit; Cash;
Household Furnishings and Personal Effects:

Claimant has stated that his loss for personalty in the amount of \$30,897.54, asserted as a tax loss was disallowed on original audit and later partially allowed. He has not shown, however, what was allowed.

The record contains no evidence in support of the asserted losses of funds with his attorney (\$3,000), of rent security deposit (\$2,400), or of loss of cash (\$8,000). As to the personal effects and household furnishings, he states that these cost \$30,000 when new and in his opinion the value at the time of loss (which he asserts as about October 25, 1960) was \$15,000.

The Commission has made various suggestions as to the type of evidence appropriate to establish these items of claim, but claimant states he is unable to furnish any other evidence.

The Commission appreciates the difficulties a claimant may have in documenting his claim, but nevertheless the record must include evidence of probative value on which the Commission may make a determination which is not speculative or conjectural. The Commission finds that claimant has not met the burden of proof with respect to these items of claim. Accordingly, the Commission is constrained to and does deny such parts of the claim.

Recapitulation

Claimant's losses within the scope of Title V of the Act are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
2,685 shares of General Distributors	October 24, 1960	\$155,028.14
Bank account	December 6, 1961	<u>2,497.54</u>
		\$157,525.68



The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that JULES MARCUS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Fifty-seven Thousand Five Hundred Twenty-five Dollars and Sixty-eight Cents (\$157,525.68) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

MAR 3 1971


Lytle S. Garlock, Chairman

Theodore J. Jaffe, Chairman

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)